IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.184 of 2003.

Decided on: *August 01, 2007*

New India Assurance Company Ltd. ***.....Appellant.***

VERSUS

Smt.Santosh Kumari & Ors. ***.....Respondents.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant:	**Mr.K.D.Sood, Advocate.**
For Respondents:	**Mrs.Devyani Sharma, Advocate for respondents No.1 to 5.**
	Mr.J.L.Bhardwaj, Advocate for respondent No.7.

Kuldip Singh, Judge (Oral)

New India Assurance Company - insurer of vehicle No.HP 11-0502 is in appeal against award dated 18.12.2002 passed by Motor Accident Claims Tribunal-II, Solan, Camp at Nalagarh in Claim Petition No.2-NL/2 of 2000 awarding Rs.8,35,000/- compensation to the claimants / petitioners. The parties are referred in the same manner as in the impugned award.

2. The facts, in brief, are that Shiv Kumar, Lineman was travelling in vehicle No.HP 11-0502 on 4.12.1999 and at place

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ? Yes***

Mindwan this vehicle was involved in accident with truck No.HP 20-9923 owned by respondent No.2. Shiv Kumar received grievous injuries in the accident and died on the spot. The accident took place due to rash and negligent driving on the part of respondent No.1 driver of the truck. The truck was insured with New India Assurance Company respondent No.3 at the time of accident. The deceased was 44 years of age at the time of death and was serving as Lineman in Himachal Pradesh State Electricity Board at Nalagarh. The petitioners are widow and children of deceased Shiv Kumar. They filed claim petition claiming Rs.10 lacs compensation on account of death of Shiv Kumar.

3. Respondents No.1 and 2 filed common reply. They have submitted that the accident took place due to rash and negligent driving on the part of driver of vehicle No.HP 11-0502 which was being driven by Jitender Mohan. The claimants are not entitled to compensation.

4. Respondent No.3 filed separate reply and took preliminary objections that the driver of vehicle No.HP 20-9923 was not authorized to drive vehicle No.HP 20-9923. He was not holding effective and valid driving licence. The documents of vehicle No.HP 20-9923 were not in proper order and, therefore, insurer is not liable to pay any compensation. The owner of the truck had not intimated the accident. The amount claimed is excessive. The accident did not take place due to rash and negligent driving on the part of driver of truck,

rather it took place due to rash and negligent driving on the part of driver of vehicle No.HP 11-0502. The insurer, thus, denied the claim. The tribunal awarded compensation to the claimants / petitioners, as noticed above. Hence, the insurer is in appeal.

5. I have heard the learned counsel for the parties and gone through the record.

6. The learned counsel for the insurer has submitted that the tribunal has wrongly fixed the liability of the insurer. The tribunal has misconstrued and misinterpreted the material on record. The learned counsel for the petitioners and owner of the truck have supported the impugned award.

7. The tribunal has recorded a specific finding that the accident took place due to rash and negligent driving on the part of the driver of truck No.HP 20-9923 owned by respondent No.2 and insured by New India Assurance Company. The certificate of insurance of truck is Ext.RW-1/A. The driving licence of the driver of the truck is Ext.RW-1/C, verification of this licence was got done by the insurer through investigator and his report is Ext.RW-2/D and letter dated 31.5.2001 of Regional Transport Authority, Indore is Ext.RW-2/E. The truck No.HP 20-9923 was insured at the time of accident. The driver was holding effective and valid licence which is established from Ext.RW-1/C, Ext.RW-2/D and Ext.RW-2/E.

8. The insurer, in the grounds of appeal, has submitted that the licence of the driver is in the name of Hardev and not in the name

of Gurdev Singh respondent No.1. In the claim petition, respondent No.1 was impleaded as Gurdev Singh alias Dev son of Variyam Singh Saini. It appears Gurdev Singh or Dev or Hardev Singh are the names of only one person. The joint reply of respondents No.1 and 2 to the claim petition is signed by Kuljeet Singh and Hardev Singh. The respondent No.1 had received the notice before the tribunal as Hardev Singh alias Gurdev Singh though the notice was addressed to Gurudev Singh alias Dev. The notice in original is at Page-130 on the claim file of the tribunal.

9. RW-1 Kuljeet Singh in his statement has stated that on the date of accident Hardev Singh was the driver on truck No.HP 20-9923. The only inference which can be drawn from the material on record that Gurdev Singh or Dev or Hardev Singh are different names of one person son of Variyam Singh. The petitioners have impleaded Gurdev Singh alias Dev but this very man is known by the name Hardev Singh and that is why he received the notice of the petition even though the notice was addressed in the name of Gurudev Singh alias Dev. He filed reply under the signatures Hardev Singh. The contention of Insurance Company that Gurdev Singh alias Dev or Hardev Singh are different persons is rejected.

10. The Insurance Company did not seek permission under Section 170 of the Motor Vehicles Act, 1988 before the tribunal below, therefore, only limited statutory defences are available to the Insurance Company. The violation of the policy, defect in driving

licence of truck driver or any other statutory defence was to be proved by the Insurance Company who has failed to prove any such defence. The learned counsel for the insurer has failed to make out any case for interference.

11. The result of above discussion is that the appeal is dismissed with no order as to costs.

(Kuldip Singh)
Judge.

August 01, 2007
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